

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

P.M.,

Claimant,

v.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH Case No. 2011080026

DECISION

Daniel Juárez, Administrative Law Judge, Office of Administrative Hearings, heard this matter on December 6, 2011, in Los Angeles, California.

P.M. (Claimant) was represented by her mother.¹

Johanna Arias-Bhatia, Fair Hearing/Government Affairs Manager, represented the South Central Los Angeles Regional Center (Service Agency).

The parties submitted the matter for decision on December 6, 2011.

STATEMENT OF THE CASE

Claimant appeals the Service Agency's denial of eligibility for regional center services. Pursuant to the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.), to be eligible for services from the Service Agency, Claimant must have a developmental disability, as defined in the law. Claimant contends she meets at least one of the five categories of developmental disability. The Service Agency contends she does not and that it is appropriate to deny her eligibility.

¹ Initials are used to refer to Claimant and family title is used to refer to Claimant's representative to preserve Claimant's privacy.

FACTUAL FINDINGS

1. Claimant, a 15-year-old girl, applied to the Service Agency for services. The Service Agency reviewed her case on June 21, 2011, and on June 27, 2011, denied Claimant's application. The Service Agency informed Claimant that it had not found her to meet the definition of developmental disability, including mental retardation or the fifth category: a condition closely related to mental retardation or a condition wherein she requires treatment similar to persons with mental retardation.² The Service Agency further informed Claimant that it believed she had pervasive developmental disorder, not otherwise specified, and a learning disorder.

2. Claimant appealed the Service Agency's denial on July 26, 2011. The Service Agency did not argue that Claimant's appeal was untimely; therefore, Claimant's appeal is deemed timely.

3. The Service Agency referred Claimant to Thomas L Carrillo, Ph.D., a clinical psychologist. Carrillo evaluated Claimant on February 10, 2011. He administered the Vineland Adaptive Behavior Scales, Second Edition (Vineland), the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV), and the Autism Diagnostic and Observation Schedule, Module 4 (ADOS). Carrillo interviewed Claimant and her mother, and made clinical observations. He reviewed her special education individualized education plan (IEP), dated May 5, 2009.

4. Claimant was 14 years and seven months of age at the time of Carrillo's evaluation.

5. Table A shows Claimant's scores on the WISC-IV, a cognitive intelligence test.

Table A

Verbal	87
Perceptual Reasoning	59
Working Memory	83
Processing Speed	85
Full Scale IQ Score	72

Carrillo described the scores as "a scattering of abilities ranging from the mild range of delay to the normal range." He opined that Claimant's scores were within the borderline to low normal range.

² At hearing, the parties focused their advocacy on autism. However, pursuant to the Service Agency's letter of denial, Claimant's eligibility determination included an analysis of not only autism, but mental retardation and the fifth category of eligibility.

6. With regard to her communication skills, Carrillo opined that Claimant “demonstrates significant delays in both receptive and expressive language,” with “notably impoverished” “conversational content” that is “representative of an individual much younger than her chronological age.” He used the Vineland to find a standardized assessment of her communication abilities. Claimant’s scores on the Vineland are shown in Table B.

Table B

Domains	Standard Score	Age Equivalent
Communication	71	
Receptive Communication		5.6
Expressive Communication		3.11
Daily Living Skills	85	
Socialization	65	
Adaptive Behavior Composite Score	72	

Carrillo described the 71 standard score in communication as within the borderline range of delay; he opined that Claimant possesses “significant delays in both receptive and expressive language.” Carrillo found her daily living skills to be in the low normal range and her socialization skills to be within the mild range of delay; her adaptive behavior composite score was within the borderline range of delay.

7. At hearing, the ALJ inquired whether Carrillo had determined age equivalencies for Claimant’s daily living and socialization skills. Carrillo could not give precise age equivalencies without reference guides that were not in his possession at the hearing, but he could safely state that Claimant’s scores in daily living and socialization were not close to her chronological age, and were somewhere between the four and seven years of age equivalency. He provided no age equivalency estimate for her adaptive behavior composite score.

8. Carrillo screened Claimant for autism using the ADOS. Table C contains Claimant’s ADOS scores.

Table C

Category	Autism Spectrum Cut-Off Score	Autism Diagnosis Cut-Off Score	Client Score
Communication	2	3	3
Reciprocal Social Interaction	4	6	6
Combined Categories	7	10	9

Carrillo described Claimant’s scores as at the threshold for a diagnosis of autism and within the autistic spectrum disorder range. Therefore, Carrillo opined, Claimant’s ADOS scores

did not warrant a diagnosis of autism. Carrillo opined that her scores were best accounted for by a diagnosis of pervasive developmental disorder, not otherwise specified.

9. Carrillo described Claimant overall as presenting a complicated profile. He conceded that she presented with an unusually flat affect, odd behaviors, and some autistic-like behaviors. He noted that she was “painfully timid and shy” and “tentative in her responses.”

10. Ultimately, Carrillo diagnosed Claimant with pervasive developmental disorder, not otherwise specified, mixed receptive and expressive language disorder, and learning disorder. Carrillo’s diagnoses included numerical reference to the Diagnostic and Statistical Manual of Mental Disorders (DSM). The ALJ is aware that the DSM is the diagnostic criteria reference manual generally accepted and used by psychologists to diagnose mental conditions. (See Gov. Code, § 11425.50, subd. (c).)

11. According to Claimant’s school records, she requires significant accommodations to access her current curriculum, although her school district considers her to have average cognitive abilities. In her IEP, dated May 12, 2011, the Los Angeles Unified School District (LAUSD) concluded that she required a mix of regular education and special education classes with accommodations to allow her to properly access her education. The IEP notes that due to her mental impairments, she has difficulty communicating verbally in class, and difficulty reading, writing, and computing mathematics. The IEP recommends speech and language services and notes that she requires “concrete” instruction, significant repetition, and a 20 to 30 second time allowance to respond to questions.³

12. Claimant qualifies for a Section 504 plan at school. Section 504 refers to Section 504 of the Rehabilitation Act of 1973, a federal law mandating accommodations to persons with disabilities. According to her 504 plan, dated March 15, 2010, LAUSD considers Claimant’s disabilities to be substantially limiting mental impairments that impair her ability to learn and require accommodations to allow her to access her education.

13. An earlier IEP and psychoeducational evaluation by LAUSD, both dated May 5, 2009, showed that in 2009, she did not qualify for special education services. LAUSD had determined at that time that her mental impairments did not impact her education.

14. Claimant offered a letter from Huey B. Merchant, M.D., a psychiatrist at the Los Angeles Child Guidance Clinic, dated November 23, 2011. According to that correspondence, Merchant diagnosed Claimant with autism. However, that diagnosis was given little weight, as Merchant did not testify and his letter did not detail any autism testing instrument used or any test results.

³ While in his report, Carrillo solely noted having considered the 2009 IEP, he affirmed at hearing that he read and considered all of the documentary evidence in the record including the later school records.

15. According to the Service Agency's social assessment, dated December 6, 2010, Claimant can cook eggs and bake cookies, use a microwave, and make a sandwich. She does chores at home and can dress herself. These assertions of Claimant's abilities were inconsistent with Claimant's mother's description of Claimant. (See Factual Finding 16.) Claimant's mother's testimony was deemed credible, as noted in Factual Finding 17, and thus, these assertions within the Service Agency's social assessment were not given full weight. The social assessment noted that Claimant does not maintain good hygiene; she is unable to take public transportation and is unable to handle small amounts of money. She isolates herself from her peers. These assertions were corroborated by Claimant's mother and were deemed accurate descriptions of Claimant.

16. Claimant's mother described Claimant as not doing well in school. She is failing all of her classes. She does not do her homework unless prompted and assisted. If she is not consistently and regularly prompted, she will not do any school work. She greatly fears failing. Claimant is completely dependent on her family to tell her what to do in school and in her home life. She will not bathe unless directed to do so. She does not bathe well. She will leave soap on her body and shampoo in her hair until it is pointed out to her. She has gone one week without bathing. She will not change her undergarments, unless prompted. She will wander in public without paying attention to people or things around her. She plays with her ear in a self-stimulating manner. According to Claimant's mother, Claimant cannot live without constant prompting, intense assistance, and constant repetition.

17. Claimant's mother testified with emotion and a genuine demeanor. She was forthright in her speech, she gave direct eye contact, and at times, conceded that Claimant had some skills that painted a mix of deficits and abilities. For these reasons, Claimant's mother was deemed highly credible and her description of Claimant was found to be an accurate one.

18. There was no evidence Claimant's condition is temporary. The evidence established that accommodations can address her condition, but there was no evidence that her condition is curable to the degree that its effects could be eradicated.

19. Claimant takes Adderall to address an earlier diagnosis of attention deficit disorder. She was receiving mental health services in the recent past; the evidence did not establish the dates she received mental health services or the type of services she received.

20. As Carrillo made reference to the DSM in his diagnosis of Claimant, and as the ALJ required objective diagnostic criteria to determine the diagnostic elements of mental retardation, the ALJ took official notice of, and referred to, the current version of the DSM, known as the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR). According to the DSM-IV-TR, "[t]he essential feature of Mental Retardation is significantly subaverage general intellectual functioning . . . that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and

safety The onset must occur before age 18 years General intellectual functioning is defined by the intelligence quotient (IQ or IQ-equivalent) obtained by assessment Significantly subaverage intellectual functioning is defined as an IQ of about 70 or below It should be noted that there is a measurement error of approximately 5 points in assessing IQ, although this may vary from instrument to instrument Thus it is possible to diagnose Mental Retardation in individuals with IQs between 70 and 75 who exhibit significant deficits in adaptive behavior.”

21. In describing mild mental retardation, the DSM-IV-TR, states, in part, “As a group, people with this level of Mental Retardation, typically develop social and communication skills during the preschool years (ages 0-5 years), have minimal impairment in sensorimotor areas, and often are not distinguishable from children without Mental Retardation until a later age. By their late teens, they can acquire academic skills up to approximately the sixth-grade level.”

LEGAL CONCLUSIONS

1. Cause exists to grant Claimant’s appeal, as set forth in Factual Findings 1-21, and Legal Conclusions 2-8.

2. Welfare and Institutions Code section 4512 states:

“Developmental disability” means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

3. California Code of Regulations, title 17, section 54001 states in pertinent part:

(a) “Substantial disability” means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

- (A) Receptive and expressive language;
- (B) Learning;
- (C) Self-care;
- (D) Mobility;
- (E) Self-direction;
- (F) Capacity for independent living;
- (G) Economic self-sufficiency.

(b) The assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines and shall include consideration of similar qualification appraisals performed by other interdisciplinary bodies of the Department serving the potential client. The group shall include as a minimum a program coordinator, a physician, and a psychologist.

(c) The Regional Center professional group shall consult the potential client, parent . . . educators, advocates, and other client representatives to the extent that they are willing and available to participate in its deliberations and to the extent that the appropriate consent is obtained.

4. California Code of Regulations, title 17, section 54001 states, "[c]ognitive' as used in this chapter means the ability of an individual to solve problems with insight, to adapt to new situations, to think abstractly and to profit from experience."

5. Claimant's IQ is closely related to the IQ scores of persons with mental retardation. Carrillo's finding of a 72 IQ places Claimant within the possible diagnosis of mental retardation (a 70-75 IQ). A diagnosis of mental retardation, according to the DSM-IV-TR, requires not only a low IQ, but significant limitations in adaptive functioning also. Claimant's adaptive functioning is indeed delayed. At 14 years, and seven months of age, Claimant communicated like a three to five-year-old and had the daily living and socialization skills of a four to seven-year-old. Claimant comes close to a diagnosis of mental retardation; her condition is therefore closely related to mental retardation.

6. Claimant's earlier school records show her to have mixed abilities, but her most recent IEP shows her to have numerous deficits that limit her ability to learn. In 2009, LAUSD did not find that she required special education. In 2011, LAUSD agreed she needed significant assistance and could only access her curriculum with accommodations. The evidence did not explain the change in needs, but the school's descriptions of Claimant were in concert with those of Claimant's mother. Pursuant to Claimant's mother's testimony, Claimant cannot function in life without constant and significant assistance. Someone must tell her what to do and when to do it, not just in schoolwork, but in self-care, self-direction, and personal grooming. These problems are substantial limitations in her life.

The evidence taken as a whole, including the findings of Carrillo, support a conclusion that Claimant has significant functional limitations in learning, expressive and receptive language, self-care, and self direction. She is substantially disabled in four areas of major life activities, as listed in California Code of Regulations, title 17, section 54001, subdivision (a)(2). Thus, Claimant is substantially disabled by her condition.

7. Claimant's 2011 IEP established that she requires "concrete" instruction, significant repetition, and a 20 to 30 second time allowance to respond to questions. Her mother credibly testified that she requires constant prompting, intense assistance, and constant repetition. The ALJ is aware that these accommodations are the same accommodations that persons with mental retardation require. (Gov. Code, § 11425.50, subd. (c).)

8. While there was insufficient evidence to conclude Claimant has autism, there was ample evidence to conclude that Claimant has a condition closely related to mental retardation; she requires the same treatment as that required by persons with mental retardation and she is substantially disabled by her condition. The evidence sufficiently established that her condition will last indefinitely. As such, Claimant meets the fifth category of eligibility, and consequently, she has a developmental disability. She is eligible to receive services from the Service Agency.

ORDER

Claimant's appeal, in OAH case number 2011080026, is granted. Claimant is eligible for services from the Service Agency as a person with a developmental disability.

Dated: December 19, 2011

DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. This Decision binds both parties. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.